

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: FAIRFIELD SENTRY LIMITED, et al., Debtor in Foreign Proceedings.	Chapter 15 Case Case No. 10-13164 (CGM) Jointly Administered
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al., Plaintiffs, v. THEODOOR GGC AMSTERDAM, et al., Defendants.	Adv. Pro. No. 10-03496 (CGM) Administratively Consolidated
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al., Plaintiffs, v. ABN AMRO SCHWEIZ AG, et al., Defendants.	Adv. Pro. No. 10-03635 (CGM)
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al., Plaintiffs, v. ABN AMRO SCHWEIZ AG, et al., Defendants.	Adv. Pro. No. 10-03636 (CGM)

**CITCO BROKERAGE CUSTOMER DEFENDANTS' AND LIQUIDATORS' FED. R.
CIV. P. 26(f) REPORT AND SCHEDULING ORDER**

In accordance with Federal Rule of Civil Procedure 26(f) and Federal Rule of Bankruptcy Procedure 7026, counsel for the Joint Liquidators and Foreign Representatives (the “Liquidators”) of Fairfield Sentry Limited (In Liquidation) (“Sentry”), Fairfield Sigma Limited (In Liquidation) (“Sigma”), and Fairfield Lambda Limited (In Liquidation) (“Lambda” and, together with Sentry and Sigma, the “Funds”) and counsel for the defendants identified in Appendix A hereto (“Defendants” and, together with the Liquidators, the “Parties”) in Adversary Proceedings Nos. 10-ap-03635 and 10-ap-03636 (the “Actions”) met on October 1, 2021 and exchanged communications thereafter. The Parties submit this Report as required under the Rules. This Report and the accompanying Proposed Order (the “Report and Order”) are without prejudice to any party’s claims or defenses, including defenses based on lack of personal jurisdiction, and without prejudice to any party’s arguments regarding whether and the extent to which it is appropriate for any discovery to proceed in these Actions prior to resolution of the Defendants’ forthcoming motions to dismiss.

I. FACT DISCOVERY

1. **Initial Disclosures:** The Parties shall exchange their initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(A) on or before Wednesday, October 27, 2021.
2. **Personal Jurisdiction:** In accordance with the Court’s order of September 28, 2021 (Dkt. 654, No. 10-ap-03635; Dkt. 714, No. 10-ap-3636), Defendants intend to move to dismiss the Actions pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction (the “PJ Motions”) on or before Friday, October 29, 2021; the Liquidators will oppose the PJ Motions on or before Tuesday, March 15, 2022; the Defendants will file a reply or replies in further support of the PJ Motions on or before Thursday, March 31, 2022; and the Court will hear

argument on the PJ Motions on Wednesday, April 20, 2022. Defendants take the position that the deadlines included herein are based on Defendants' assumption that the Court will resolve the PJ Motions on April 20, 2022 or shortly thereafter. Defendants reserve all rights to seek extensions of any deadlines included herein in the event this assumption does not hold true. The Liquidators disagree that the timing of the Court's resolution of the PJ Motions should affect the parties' compliance with the dates herein and reserve all rights to oppose any motion by Defendants seeking extensions of the deadlines herein.

Defendants oppose jurisdictional discovery on the basis that the Liquidators have not pled a *prima facie* case with respect to personal jurisdiction. Defendants also oppose merits discovery prior to the Court's resolution of their PJ Motions. The Liquidators disagree and take the position that the discovery the Liquidators served on the Defendants on August 18, 2021, August 28, 2021, and September 14, 2021, and any future discovery served, should move forward in accordance with the Federal Rules of Civil Procedure. Defendants reserve all rights to object and/or to request relief accordingly with respect to the discovery served on them. The Liquidators reserve all rights to move to compel Defendants to respond to the discovery already served or future discovery, including but not limited to arguing that Defendants must move forward with discovery in accordance with the Federal Rules of Civil Procedure in the absence of any stay imposed by the Court.

Should the Court deny the PJ Motions, Defendants also plan to move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for the Liquidators' failure to state a claim on which relief can be granted (the "12(b)(6) Motions"), and the Liquidators intend to oppose any 12(b)(6) Motions. Defendants reserve all rights to move to stay discovery or otherwise revise this Report and Order upon filing of their 12(b)(6) Motions, and the Liquidators reserve all rights to oppose any such motion(s).

3. Discovery:

- a. Defendants will submit their responses and objections to the initial discovery requests served on them by Wednesday, October 27, 2021, except for (i) Defendants BNP Paribas (Suisse) SA, BNP Paribas (Suisse) SA Ex Fortis, BNP Paribas (Suisse) SA Private, Finter Bank Zurich, IHAG Handelsbank AG, PKB Privatbank AG, and Arden International Capital, Ltd., who will submit their responses and objections to the initial discovery requests served on them by Monday, November 1, 2021; and (ii) Defendants UBS AG and UBS Jersey Nominees Limited, who will submit their responses and objections to the initial discovery requests served on them by Wednesday, November 3, 2021.
- b. Defendants' position is that all discovery of foreign parties and/or non-parties shall comply with all applicable cross-border discovery mechanisms, including, where applicable, the procedures of the Hague Convention of 1970 on the Taking of Evidence Abroad. The Liquidators disagree with Defendants and take the position that all discovery should proceed under Federal Rules of Civil Procedure without regard to cross-border discovery mechanisms, provided, however, the Liquidators reserve all rights with regard to the use of cross-border discovery mechanisms.

4. Interrogatories and Requests for Admission:

- a. The scope and number of the Interrogatories shall be governed by Rule 33 of the Federal Rules of Civil Procedure and Rule 7033-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local

Bankruptcy Rules”). The Parties reserve all rights to seek a court order or to stipulate to expanding the number of Interrogatories provided for under the aforementioned Rules.

- b. Interrogatories (except contention interrogatories) shall be served by Monday, October 17, 2022 pursuant to Rule 7033-1 of the Local Bankruptcy Rules.
- c. Contention interrogatories and requests for admission shall be served by Monday, October 2, 2023. Contention interrogatories shall be served no earlier than Monday, October 17, 2022.

5. **Depositions:** The number and length of depositions shall presumptively be as provided in the Federal Rules of Civil Procedure, subject to the right of any party to seek modification thereof by mutual agreement or, for good cause, by order of the Court. The Parties shall meet and confer regarding the location and scheduling of depositions, taking into account the interests of the witness.

6. **Merits Document Discovery:** The Parties shall substantially complete document discovery by Monday, June 27, 2022.

7. **Fact Discovery Cut-Off:** Fact discovery shall conclude by Friday, January 27, 2023.

II. EXPERT DISCOVERY

1. **Identification of Potential Experts:** The deadline for the Parties to disclose the identity of any expert witness that the designating Party may use at trial to present evidence under Federal Rules of Evidence 702, 703, or 705 is Tuesday, December 13, 2022.

2. **Expert Reports and Disclosures:** The Parties shall submit a mutually agreed to proposed schedule for exchanging any other disclosures required under Federal Rule of Civil Procedure 26(a)(2)(B), including service of principal expert reports, identification of rebuttal expert witnesses and service of rebuttal expert reports and disclosures, and completion of expert depositions—or, barring agreement, shall submit competing proposed Orders addressing the scheduling matters specified in this Paragraph—for the Court's consideration no later than Wednesday, February 15, 2023.

3. **Expert Discovery Cut-Off:** All expert discovery shall be completed by Monday, October 2, 2023.

III. FURTHER PROCEEDINGS AND OTHER MATTERS

1. The Parties shall submit a mutually agreed-to proposed ESI Protocol and Confidentiality Order (or, barring agreement, competing proposed ESI Protocols and Confidentiality Orders) for the Court's consideration by Thursday, October 21, 2021.

2. Any request for leave to amend pleadings or join parties shall be made by Friday, December 23, 2022. The Parties expressly preserve all rights to make any arguments, including but not limited to undue delay and that additional discovery is required because of such amendment.

3. The Parties shall jointly contact the Court on Tuesday, October 10, 2023 to schedule a status conference to discuss summary judgment and trial.

4. All motions, applications, and discovery disputes shall be governed by the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and the Court's Chambers Rules.

5. The Parties may stipulate to the adjournment of any date herein without further approval of the Court, other than the dates for: (a) fact discovery cut-off, (b) expert discovery cut-

off, and (c) proposing schedules for the exchange of expert reports and for seeking a further schedule from the Court as provided in paragraph III(4).

6. All applications to modify or extend any of the dates herein shall be made in a written application in accordance with the Court's Chambers Rules and shall be made no less than two business days prior to the expiration of the date sought to be extended.

Respectfully submitted,

Dated: October 19, 2021
New York, New York

/s/ David Elsberg

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**Dated: October 25, 2021
Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge**